IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1353 of 2003 (O&M)

Date of decision : 22.11.2007

Harjit Singh and another

… Appellants

Versus

Lachman Singh and another

…Respondents

Present : Mr.Vishal Sodhi, Advocate for the appellant.
Mr.S.D.Bansal, Advocate for respondent No.1.

Vinod K.Sharma, J. (Oral)

This Regular Second Appeal has been filed against the judgments and decrees passed by the learned Courts below vide which suit filed by the plaintiffs for possession of property 4/17 shares of land measuring 17 marlas in Khewat No.2048, Khatauni No.3009 Khasra No.3316/1/6 as per jamabandi for the year 1991-92 has been ordered to be decreed.

The plaintiffs filed a suit that he was entitled for possession being owner of the property in pursuance to the purchase made by him by way of sale deed dated 13.10.1983. It was also the case of the plaintiffs that construction on the property was also raised by him, therefore, he was absolute owner of the suit property. It was further the case of the plaintiffs that on earlier occasion, a petition was filed for eviction of the appellant-defendants where a plea was taken that they were not the tenants and the dispute between the parties was settled with the intervention of the respectables and the property owned by the family members was partitioned orally. It was also pleaded that ownership of the plaintiffs was established

and it was held that plaintiffs had a right to claim possession of the property from the defendants.

The suit was contested whereas title of the plaintiff-respondents was challenged. It was further claimed that the defendants were owners in possession of the suit property on the basis of oral family settlement which was effected in the month of July, 1994. It was claimed that property was purchased by the plaintiffs with the funds earned by the defendants as well as by the plaintiffs and as such the property and construction over the property was raised with joint funds. It was also the case of the defendants that under the family settlement, the suit property was given them.

On merit, it was pleaded that property was purchased in the name of the plaintiffs being parents. It was claimed that present suit has been filed to harass the defendants.

The learned Courts below have recorded a concurrent finding of fact that the plaintiffs are owners and entitled to possession of the suit property. The plea of oral partition was disbelieved by the learned Courts below. In support of claim of investment, except the statement made by the defendant that the property was purchased with joint funds no evidence was brought on record.

No existing right in property which was alleged to subject matter of family settlement was brought on record.

It may also be pertinent to mention here that in the later suit filed by plaintiff-respondents for possession, the findings recorded by the learned Courts below in the present case were taken into consideration to arrive at a conclusion that appellant-defendants failed to prove the family

settlement. RSA No.1127 of 2003 against the judgment and decree has been dismissed by this Court.

Learned counsel for the appellants contends that there was evidence on record by way of statement of Darsahn Singh that there was a family settlement arrived at between the parties and parties acted upon the same. Learned counsel for the appellants also contends that in a complaint filed by the plaintiff-respondents, factum of family settlement was admitted. The said complaint was also brought on record as Exhibit D-1. In the said complaint, there was an allegation that a compromise was entered into, but no such compromise was brought on record. Only statement was brought on record.

Unless some existing right in property is proved, the arrangement made by parties cannot be said to be family settlement, as is sought to be projected by the learned counsel for the appellants. Consequently, there is no merit in this appeal.

No substantial question of law arises for consideration in this appeal.

Dismissed.

[**Vinod K.Sharma**]
Judge

22.11.2007

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